

MORRISON MAHONEY LLP

COUNSELLORS AT LAW

WALL STREET PLAZA
88 PINE STREET, SUITE 1900
NEW YORK, NY 10005
212-825-1212

Nicole M. Battisti
Phone: 212-428-2490
Fax: 212-576-8934
nbattisti@morrisonmahoney.com

MASSACHUSETTS	NEW HAMPSHIRE
BOSTON	MANCHESTER
FALL RIVER	NEW JERSEY
SPRINGFIELD	PARSIPPANY
WORCESTER	
CONNECTICUT	NEW YORK
BRIDGEPORT	NEW YORK
HARTFORD	
ENGLAND	RHODE ISLAND
LONDON	PROVIDENCE

February 27, 2023

VIA ECF

Magistrate Judge Gabriel W. Gorenstein
United States District Court
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

MEMORANDUM ENDORSED

Re: *Leon v. Zydus Pharmaceuticals Inc*
Docket No: 1:22CV07636
MM No: 10094090

Dear Honorable Gorenstein:

I represent the Defendant, Zydus Pharmaceuticals (USA), Inc., incorrectly named as Zydus Pharmaceuticals, Inc. (“Zydus” or “Defendant”) in the above-referenced matter. I write pursuant to Section 2.A. of the Court’s Individual Practice Rules and Local Rule 37.2, to respectfully request a pre-motion conference to discuss Defendant’s anticipated motion to compel discovery under Rule 37(a)(1) of the Federal Rules of Civil Procedure.

Plaintiff’s complaint alleged that sometime prior to August 24, 2021, the plaintiff purchased and subsequently consumed a number of tablets from the said bottle labelled as Carvedilol 25 mg tablets, manufactured, sold, and distributed by defendant. The complaint further alleges that he ingested “contaminated” medication from the bottle and was caused to sustain personal injuries.

The court issued a Scheduling Order (“Order”) on September 30, 2022 (D.E. 12) requiring both parties to exchange initial disclosures by October 31, 2022. Zydus timely served its Rule 26(a)(1) initial disclosures on October 31, 2022. Plaintiff did not serve his Rule 26(a)(1) initial disclosures, in violation of Your Honor’s Order. Undersigned counsel served plaintiff’s counsel, John Decolater, with a good faith letter via email (jdecolater@sbk.nyc) on December 29, 2022 at

MORRISON MAHONEY LLP

Magistrate Judge Gabriel W. Gorenstein
February 27, 2023
Page 2

3:05 p.m. EST, requesting plaintiff serve defendant with initial disclosures within fifteen (15) days or we would seek judicial intervention.

Additionally, Defendant previously filed a Letter Motion incorrectly addressed to District Judge John G. Koeltl on February 10, 2023. *See* D.E. 14. While this filing was rejected from this Court as being directed to the wrong Judge, it prompted communication from Mr. Decolater. On February 12, 2023 at 1:42 p.m. EST, Mr. Decolater wrote an email to undersigned counsel that Plaintiff was working on responses to Defendant's discovery demands and would be "serving those responses shortly." Undersigned counsel called Mr. Decolater's office and left a message but was not able to connect telephonically. Therefore, on February 13, 2023 at 9:36 a.m. EST, undersigned counsel wrote an email to Mr. Decolater reminding him plaintiff's initial disclosures were due on October 31, 2022 which Defendant has not yet received. Undersigned counsel additionally informed Mr. Decolater that Defendant intends to refile the Letter Motion by Wednesday (2/15/23) if plaintiff did not serve her initial disclosures. Defendant did not receive any response from Mr. Decolater.

Defendant has given plaintiff an additional 12 days to comply beyond February 15, 2023 deadline. As of the date of this letter, Plaintiff has not served her initial disclosure and remains in violation of the court's order. Accordingly, Defendant respectfully requests that the Court schedule a pre-motion conference to discuss these issues and compel plaintiff to serve her outstanding discovery. We thank you for your time and attention to this matter.

Respectfully Submitted,



Nicole M. Battisti

NMB/RP

cc: **VIA ECF**
Law Office of Stephen B. Kaufman, P.C.
John Decolater
Counsel for Plaintiff

Application denied for failure to comply with paragraph 2.A of the Court's Individual Practices. That rule requires Ms. Battisti to contact plaintiff's counsel to arrange to meet in person or by telephone. If plaintiff's counsel refuses to cooperate in arranging such a meeting Ms. Battisti should make an application regarding that refusal.

So Ordered.


GABRIEL W. GORENSTEIN

United States Magistrate Judge

February 27, 2023